IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6998 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NISAR AHMAD ANSARI

Versus

GUJ UNIVERSITY

Appearance:

MR MANOJ SHRIMALI FOR MR GIRISH PATEL for Petitioners

MR MITUL SHELAT FOR MR SN SHELAT for Respondent No. 1

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. These three petitioners aspiring to become Lecturers in Persian language had sought direction on the respondent No.1 - University to call them for interview on 17th October 1988 and to consider their cases for appointment to the post in question. They also prayed

for restraining the University from appointing the respondents No.2 and 3 to that post.

2. The post was advertised by the Gujarat University by its notice dated 30th March 1988 which was published in the newspaper on 31st March 1988, a copy of which is at Annexure `A' to the petition. Applications were invited by that notice, inter alia, for one post of Lecturer in Persian so as to reach the University before 10th April 1988. The petitioners had applied for the post. As per the qualifications prescribed by the University for Lectureship, a candidate was required to possess a Doctor's degree or research work of an equally high standard, and consistently good academic record with first or higher second class Master's degree in the relevant subject or an equivalent degree of a foreign University, provided that if a candidate possessing a Doctor's degree or equivalent research work is not available, or is not considered suitable, person possessing a consistently good academic record (weightage being given to M. Phil. or equivalent degree or research work of quality) could be appointed, if he had done research work for at least 2 years or had practical experience in a research laboratory / organisation, on the condition that he will have to obtain a Doctor's degree or give evidence of research work of equivalent high standard within five years of his appointment, failing which he would not be able to earn future increments until he fulfils these requirements. It is evident from the minimum qualifications prescribed under the Rules at Annexure `C' to the petition that a Doctor's degree holder was a candidate of first choice unless he was not considered suitable.

3. Admittedly, none of the petitioners possessed a Doctor's degree. The learned counsel appearing for the petitioners contended that even if they did not possess Doctor's degree, they ought to have been called for an interview because under the prescribed minimum qualifications, even those who had done research work of equally high standard were eligible for the post. It was submitted that research work of high standard which could be equated with a Doctor's degree was equated with a Doctor's degree itself while laying down the eligibility criteria under the Rules. It was also argued that the respondent No.3 who did not possess a Doctor's degree was called for interview and therefore, the contention that only Doctor's degree holders were eligible and could be called for interview, is erroneous. It was also submitted that, in the past, the petitioner who did not possess Doctor's degree were in fact called for interview

for the same post, and there was no reason why they should not have been called this time also for being considered for the post in question.

4. It is brought on record by an affidavit in reply filed on behalf of the respondent - University that none of the petitioners possessed a Ph.D. Degree. It is stated that the petitioner No.1 did not enclose with his application any testimonials, nor did he show that he had done any research work as contemplated by the Rules. The petitioner No.2 did not produce his T.Y.B.A. examination certificate to enable the University to ascertain whether he had a consistently good academic record. He also did not disclose any research papers, nor did he claim to have any research papers. The third petitioner also did not produce any research papers to his credit. It is stated that the respondent No.2 possessed a Ph.D. Degree and was fulfilling all the qualifications laid down under the rules, and therefore, it was not necessary to resort to the proviso in the Rule, which empowered the University to consider candidates with lower qualification. The Rule clearly indicates that candidates not possessing the Doctor's degree could be considered only if a candidate possessing the Doctor's degree or equivalent research work is not available or is not considered suitable. In the present case, when the respondent No.2 who possessed the Doctor's degree was available and was found to be suitable, there was obviously no need for the University to resort to the proviso when there was only one post to be filled in as per the advertisement.

5. The contention that the respondent No.3 who did not possess a Doctor's degree was called for an interview, and therefore, the petitioners should have been called, is misconceived. As stated in para 6 of the affidavit in reply, the third respondent had mentioned that he possessed M.Phil. in Persian and Hindi and when it was found that his M.Phil. was only in Hindi, he was not considered by the committee. When the third respondent was not considered by the Committee, his instance cannot be cited as creating any right in favour of the petitioners for being called for interview for consideration for the said post.

6. Merely because the petitioners were called for interview in past, that was no ground for calling them again. It has been stated on oath that in the past they were called for interview because there was no applicant having qualification of Ph.D. at that time, while this time, when a qualified candidate was available, it was

just and proper to call him for consideration.

7. The contention that the second respondent has been appointed on any extraneous ground is not borne out from any reliable material. It is stated that the selection committee duly constituted had considered the case of the respondent No.2. There is absolutely no reason to infer any malafides against the selection and appointment of the respondent No.2.

8. In the above view of the matter, there is absolutely no substance in the petition and it is rejected. Rule is discharged with no orders as to costs. Interim relief stands vacated.

[R.K.ABICHANDANI, J.]

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